IN THE

Supreme Court of the United States

OCTOBER TERM 1978

No. 78-1522

CECIL D. ANDRUS, Secretary of the Interior,
Petitioner,

v

THE STATE OF UTAH,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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Motion for Leave to Intervene or, in the Alternative, to File Brief Amicus Curiae and Brief for the Ute Indian Tribe of the Uintah and Ouray Reservation — Intervenor or Amicus Curiae

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MOTION FOR LEAVE TO INTERVENE OR, IN THE ALTERNATIVE, TO FILE BRIEF AMICUS CURIAE

The Ute Indian Tribe of the Uintah and Ouray Reservation (herein "the Tribe"), hereby respectfully moves the Court for leave to intervene herein or, in the alternative, to file the attached brief amicus curiae in this case.

The consent of the attorney for the Petitioner Secretary of the Interior for appearance as amicus curiae has been obtained as evidenced by the letter filed herewith. The consent of the attorney for the Respondent State of Utah has been requested but was refused.

The Tribe believes, however, that as a political entity existing pursuant to federal law (25 U.S.C. §476) (Appendix A), such consent to appear as amicus curiae is not required under Rule 42(4) of the Rules of the Supreme Court.

The interest of the Tribe in this case arises as follows:

1. The Tribe is a federally recognized American Indian Tribe organized under federal law (25 U.S.C. §476) (Appendix A), and duly recognized as such by the Defendant Secretary of the Interior.

2. This case involves the right of the State of Utah to make school land grant indemnity selections in lands which the Tribe claims are a part of its existing Indian reservation lands. Under Utah's Enabling Act (Appendix B), Utah may not make indemnity selections within an Indian reservation.

3. Such Indian reservation lands, historically known as the Uncompahgre Reservation and presently a part of the Tribe's Uintah and Ouray Reservation, were established as an Indian Reservation by the Executive Order of January 5, 1882 (I Kappler 901) (Appendix C), and opened to non-Indian location and entry by the Act of June 7, 1897, 30 Stat. 62 at 87 (Appendix D). Said 1897 Act further specifically reserved all of the hydrocarbon mineral lands in the Reservation to the United States.

4. The Tribe claims that such opening to non-Indian settlement did not terminate or otherwise affect the

reservation status of such Reservation in accordance with the principles laid down by this Court in the cases *Seymour v. Superintendent*, 368 U.S. 351 (1962); *Mattz v. Arnett*, 412 U.S. 481 (1973); *DeCoteau v. District County Court*, 420 U.S. 425 (1975); and *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977).

5. The precise question of whether or not the Uncompahgre Reservation lands have retained their Indian reservation status is presently pending before the United States District Court for the District of Utah in the case *The Ute Indian Tribe v. The State of Utah, et al.*, Civil Action No. C-75-408. The question of whether or not the lands in question are unavailable for selection by the State as the result of the reservation of the mineral lands in the 1897 Act was apparently not considered herein below.

6. Counsel for the Secretary of the Interior, including attorneys in both the Justice and Interior Departments, have been aware of the pendency of the action in the Utah District Court and the involvement of the Uncompahgre Reservation issue therein since October of 1975, but have apparently failed and refused to raise any issue regarding the Uncompahgre Reservation in this case, notwithstanding the government's fiduciary obligation to the Tribe to protect its reservation lands and interests.

7. The undersigned counsel for the Tribe has just become aware of the potential adverse impact that a decision in favor of the State of Utah by this Court in this case would have in the pending litigation to

determine the status of the Uncompahgre Reservation. Neither the State of Utah nor the Secretary of the Interior has heretofore sought to either join the Tribe as a party herein or to apprise the Tribe of the impact and effect this case would have on the Tribe's property rights or on the litigation pending since October of 1975 to determine the reservation status issue.

8. If these proceedings are remanded as requested in the attached brief, the determination of the status of the Uncompahgre Reservation in the pending litigation before the Utah Federal District Court will have a critical, even determinative, effect on the outcome of this case. If the lands in question on which the State of Utah seeks to make its school land indemnity selections are either specifically reserved to the United States or are contained within a continuing Indian reservation, they are not available for such selections by the State.

Respectfully submitted,

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In the Supreme Court of the United States

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BRIEF OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION — INTERVENOR OR AMICUS CURIAE

INTEREST OF THE UTE TRIBE

The Ute Indian Tribe of the Uintah and Ouray Reservation (herein referred to as the "Tribe") is a federally recognized American Indian Tribe, organized pursuant to federal law (25 U.S.C. §476) (Appendix A), and within the general guardianship of the United States over Indian Tribes. The Tribe inhabits an In-

dian reservation in northeastern and east-central Utah known as the Uintah and Ouray Reservation. That Reservation is composed of the combined historic Uintah and Uncompahgre* Indian Reservations. All of the school land grant indemnity selections in issue in this case between the Secretary of the Interior and the State of Utah are located within the boundaries of the Uncompahgre Reservation and are a part of the Tribe's Uintah and Ouray Reservation.

The specific question of whether or not the Uncompahgre Reservation is a continuing Indian Reservation and presently a part of the existing Uintah and Ouray Reservation is presently in litigation before the United States District Court for the District of Utah. That action was filed in October of 1975 and is entitled the *Ute Indian Tribe v. The State of Utah, et al.*, Civil No. C-75-408. Trial in that case was held on August 1-2, 1979. It was not until that trial that the Tribe realized the potentially adverse effect which the decision herein could have on its claims regarding the Uncompahgre Reservation.

There is an urgent need for the Court to consider the matters set forth herein. The Defendant Secretary of the Interior has the ultimate statutory responsibility for "the management of all Indian affairs and of all matters arising out of Indian realtions" (25 U.S.C. §2) (Appendix E). The attorneys for the Secretary of the Interior, both in the Department of Justice and in the Department of the Interior, have been aware of the

* The Indian Department Agency for the Uncompahgre Reservation was originally located at a place called "Ouray" within the Reservation.

pendency of the *Ute Indian Tribe* case, *supra*, and of the Tribe's claim of reservation status for the Uncompahgre Reservation since at least October of 1975. Notwithstanding such knowledge and their statutory and fiduciary obligations to the Ute Tribe to represent its interests in pending litigation (*see* 25 U.S.C. §175) (Appendix F), the Defendant Secretary of the Interior has never raised, acknowledged, or defended the interests of the Ute Indian Tribe in this litigation or asserted reservation status for the lands in question as a defense.

Similarly the attorneys for the State of Utah herein (Messrs Dewsnup and Jensen), are the same attorneys involved in the defense for the State of Utah of the Tribe's claim for reservation status of the Uncompahgre Reservation in the *Ute Indian Tribe* case, *supra*. Notwithstanding the pendency of that action and their knowledge thereof, and of the Tribe's claims therein, the State of Utah has never sought to join the Tribe as a party herein or to apprise either the District Court or counsel for the Tribe of the overlapping nature of the issues and the potential effect of this case on the *Ute Indian Tribe* case.

Attorneys for both the State of Utah and the United States submitted amicus briefs to this court in a prior case involving the boundaries and status of the Uintah and Ouray Reservation. See *Appawora v. Brough*, No. 76-815, vacated and remanded at 431 U.S. 901 (1977).

As will be developed below, the Tribe claims not only that the lands in question herein are *not* available

for State indemnity selections as the result of those lands being within the Tribe's Indian reservation, but claims that the Tribe has an interest in any mineral development thereon. The Tribe's interests are not being adequately protected by the existing parties.

SUMMARY OF ARGUMENT

1. That the lands in question are not available for selection by the State of Utah as school land grant indemnity selections as the result of their being within a continuing federal Indian reservation and being subject to a specific statutory reservation in the United States.

2. That this matter should be remanded to the District Court not only to determine the questions related to Indian reservation status which have not been heretofore raised by the parties, but to allow the Tribe to defend its interests which the Defendant Secretary of the Interior has failed to defend.

ARGUMENT

I

THE LANDS IN QUESTION ARE NOT AVAILABLE FOR SCHOOL LAND GRANT INDEMNITY SELECTIONS BECAUSE THEY ARE WITHIN AN EXISTING FEDERAL RESERVATION.

The school land grant selections in issue herein are located within the boundaries of the Uncompahgre Indian Reservation (the "Reservation"). While the State of Utah has disputed the continuing reservation status

of that area in the pending litigation before the Utah Federal District Court, that issue remains unresolved. The consistent decisions of this Court, however, have established the principle that Indian reservation status is presumed to continue unless and until terminated by Congress by clear, specific, and unambiguous legislative action. *See Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977); *DeCoteau v. District County Court*, 420 U.S. 425 (1975); *Mattz v. Arnett*, 412 U.S. 481 (1973); and *Seymour v. Superintendent*, 368 U.S. 351 (1962).

The Uncompahgre Reservation was created by Executive Order on January 5, 1882 (I Kappler 901) (Appendix C). By the Act of August 15, 1894 (28 Stat. 286 at 337) (Appendix G), Congress attempted to open the Reservation lands to non-Indian entry under the "homestead and mineral laws of the United States," but only after the selection of allotment lands for the Ute Indians and the issuance of a proclamation. The 1894 Act was never implemented because the Indians would not voluntarily accept the allotments and the required proclamation was never issued.

Since the 1894 Act was not implemented, Congress passed the Act of June 7, 1897 (30 Stat. 62 at 87) (Appendix D), again directing the making of allotments to the Indians and providing for the opening of the unallotted lands to entry under the public land laws. No mention is made in either act of express language of disestablishment, which language this Court has required to support a finding of reservation termination in the *DeCoteau* and *Rosebud* cases, *supra*. Indeed, the language

used by Congress is very similar in form and effect to the language determined by this Court *not* to have resulted in reservation termination in the *Mattz* and *Seymour* cases, *supra*. The legislative history and surrounding circumstances of the 1894 and 1897 Acts similarly do not support a finding of reservation disestablishment.

Many other facts, being fully developed in the litigation now pending in the Utah Federal District Court, support a finding of continued reservation status for the Reservation. Interestingly, such evidence includes the Constitution and Bylaws of the Tribe, adopted pursuant to 25 U.S.C. §476 (Appendix A) *and approved by the Secretary of the Interior in 1937*, which recognizes the continuing existence of the Uncompahgre Reservation by extending Tribal jurisdiction under the Tribal Constitution throughout that reservation area. See Appendix H. As revealed by the District Court's decision herein, it was not until 1965 that the State first sought to obtain the Uncompahgre Reservation lands.

It is further important to note that the 1897 Act, *supra*, which opened the Reservation, expressly *reserved* to the United States hydrocarbon mineral lands in the Reservation.

> And the title to all of the said [unallotted] lands containing gilsonite, asphaltum, elaterite, *or other like substances* is reserved to the United States. (30 Stat. at 87.) (Appendix D) [Emphasis added.]

As far as the Tribe can determine, the effect of the 1897 Act, including its continuing reservation of mineral lands, has not been considered by the courts

below. It is clear from the legislative history of the 1897 Act that oil shale lands, such as those selected by the State of Utah, and are included in the phrase "other like substances" in connection with gilsonite, asphaltum and elaterite in the 1897 Act. See, e.g., Senate Document No. 161, 54th Congress, 1st Session, dated March 11, 1896, consisting of a letter from the Secretary of the Interior to the Congress, with attached report, in response to a request from Congress for information as to why the Uncompahgre lands were not opened under the 1894 Act, *supra*.

> In response to said resolution, I have the honor to call your attention to pages 10 and 37 of my annual report . . . a copy of which I herewith transmit. That report sets forth the fact that valuable discoveries of "gilsonite" have been explored by officers of the Geological Survey on this reservation since the date of passage of [the 1894 Act] and shows that if these lands are opened to entry in the ordinary way the Government would be deprived of extensive profits which should go into its Treasury.
>
> . . . .
>
> [Extract from Annual Report . . . p. 37] *Mineral deposits on the Uncompahgre Reservation*. . . .
>
> The *bituminous shale*, sandstone, and limestone might be of commercial value under favorable conditions for transportation. Practically the same materials elsewhere are employed either for paving purposes or made to yield up their hydrocarbons as commercial oils. p. 1-2.
>
> [Second emphasis added.]

Even without the Indian reservation issue, there is a substantial question, apparently unaddressed in this

case thus far, as to whether or not the above quoted reservation of mineral *lands* in the 1897 Act is overcome by 43 U.S.C. §§851, 852. The State of Utah relies upon 43 U.S.C. §§851, 852 to select mineral lands from the "unappropriated public lands" of the United States as in lieu or indemnity school selections. The in lieu selections of the State are limited to areas of "unappropriated public lands," a phrase defined in 43 U.S.C. §852(d)(1) (Appendix I) as falling into three specific groups. The first group includes those lands withdrawn for oil shale, but "otherwise subject to appropriation, location, selection, entry or purchase under the non-mineral laws of the United States"; the second group includes lands withdrawn by Executive Order Numbered 5327 "if otherwise available for selection"; and the third, contains those lands "which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals."

The lands chosen by the State do not fall into any of the three groups defined by 43 U.S.C. §852(d)(1) as being "unappropriated public lands." The State selections are not Group 1 because they are specifically exempted from public appropriation, location or entry by the 1897 Act. Clearly, the State selections are not in Group 2 by reason of their not being withdrawn by Executive Order Numbered 5327. Further, the lands are not "otherwise available" since they are specifically reserved by the United States under the 1897 Act. Group 3 includes only those lands in which the surface interest has been previously "disposed of," the United States retaining the subsurface or mineral interest only. Again, this group does not include the State selections

since the entire fee, subject to the beneficial interest of the Ute Indians, has been reserved in the United States by the 1897 Act. The lands selected by the State do not fit into the statutory definition of "unappropriated public lands" as set out in 43 U.S.C. §852(d)(1) and the selections are, therefore, void.

If the lands in question are within a continuing federal Indian reservation or otherwise specifically reserved, they are not subject to selection by the State, and the fundamental issue before the Court regarding those selections should be decided against the State. The Utah Enabling Act, Act of July 16, 1894, 28 Stat. 107 at 109, Section 6, provides as follows:

SEC. 6. That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced *in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act* until the reservation shall have

been extinguished and such lands be restored to and become a part of the public domain. (Appendix B) [Emphasis added.]

This case should be remanded to the District Court for a determination of the reservation status issue in connection with the pending litigation between the Tribe and the State of Utah, *The Ute Indian Tribe v. The State of Utah, et al.*, Civil No. C-75-408, U.S. District Court for the District of Utah.

II

THE INTEREST OF THE UTE TRIBE IN ITS RESERVATION AND THE RESOURCES THEREIN SHOULD NOT BE PERMITTED TO BE LOST BY THE FAILURE OF THE SECRETARY OF THE INTERIOR TO PROTECT TRIBAL INTERESTS.

The interest of the Tribe herein extends beyond merely defending the territorial integrity of its Reservation. The actions of the State and the Secretary in the court below in stipulating to the beginning of hydrocarbon development on the tracts in issue, and to depositing the monies derived therefrom in Court, are apparently an attempt to defeat the substantial, potentially overriding interest of the Tribe. Those proceeds, should the continued reservation status of the Uncompahgre Reservation be sustained in the court below in the *Ute Indian Tribe* case, would belong to the Tribe. *See* 25 U.S.C. §398b which provides as follows:

> The proceeds from rentals, royalties, or bonuses of oil and gas leases upon lands within Executive

> order Indian reservations or withdrawals shall be deposited in the Treasury of the United States to the credit of the tribe of Indians for whose benefit the reservation or withdrawal was created or who are using and occupying the land, and shall draw interest at the rate of 4 per centum per annum and be available for appropriation by Congress for expenses in connection with the supervision of the development and operation of the oil and gas industry and for the use and benefit of such Indians: PROVIDED, That said Indians, or their tribal council, shall be consulted in regard to the expenditure of such money, but no per capita payment shall be made except by Act of Congress.

Thus, if the Tribe should prevail on the reservation status issue, all of the funds now on deposit in the registry of the District Court below (*see* Findings of Fact, Conclusions of Law and Decree dated June 8, 1876, (First) Finding No. 5, pp. 6-7), derived from hydrocarbon leases on the lands in issue within the Uncompahgre Reservation, will, by federal law, be required to be deposited in the Federal Treasury to the credit of the Ute Tribe and be administered as provided in 25 U.S.C. § 398b. Any final decision by this Court at this time, before the Tribe has had an opportunity to assert in the District Court its interest in those funds and to have the reservation status issue considered in the context of this case, would result in the possible loss by the Tribe of those funds and necessitate additional litigation against either the State or the Federal Government to recapture those funds.

This case should be remanded so that the Tribe does not suffer as the result of the failure of the Secre-

tary of the Interior to fulfill his duty to protect the interests of the Tribe in its reservation lands.

CONCLUSION

Until very recently the Tribe was unaware that the State of Utah was apparently attempting to adversely affect the pending *Ute Indian Tribe* case, *sub silentio,* by failing to disclose to the court and counsel for the Tribe the overlapping nature of the issues involved herein. The Secretary of the Interior has failed to raise the seemingly obvious, potentially dispositive defense of reservation status which might, however, defeat the claim of the United States to the money on deposit with the lower court.

The Tribe respectfully submits that the just and proper resolution of this matter requires that all proceedings be remanded to the District Court for consideration of the reservation status issue and of the rights and interests of the Ute Indian Tribe in the subject lands.

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that three true and correct copies of the foregoing have been mailed, postage prepaid, on this the 16th day of August, 1979, to each of the following:

Richard L. Dewsnup
Assistant Utah Attorney General
Room 301
231 East 4th South
Salt Lake City, Utah 84103
and to the
Solicitor General
Department of Justice
Washington, D.C. 20530

Scott C. Pugsley

APPENDIX A

25 U.S.C. § 476

Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and bylaws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws.

In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rgihts and powers: To employ legal counsel, the choice of counsel and fixing of fees to be subject to the approval of the Secretary of the Interior; to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe; and to negotiate with the Federal, State, and local Governments. The Secretary of the Interior shall advise such

tribe or its tribal council of all appropriation estimates or Federal projects for the benefit of the tribe prior to the submission of such estimates to the Bureau of the Budget and the Congress.

APPENDIX B

Utah Enabling Act
Act of July 16, 1894
28 Stat. 107 at 109
Section 6

That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any Act of Congress other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided,* That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this Act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

APPENDIX C

Executive Order of January 5, 1882
I Kappler 901

Uncompahgre Reserve

EXECUTIVE MANSION, *January 5, 1882.*

It is hereby ordered that the following tract of country, in the Territory of Utah, be, and the same is hereby, withheld from sale and set apart as a reservation for the Uncompahgre Utes, viz: Beginning at the southeast corner of township 6 south, range 25 east, Salt Lake meridian; thence west to the southwest corner of township 6 south, range 24 east; thence north along the range line to the northwest corner of said township 6 south, range 24 east; thence west along the first standard parallel south of the Salt Lake base-line to a point where said standard parallel will, when extended, intersect the eastern boundary of the Uintah Indian Reservation as established by C. L. Du Bois, United States deputy surveyor, under his contract dated August 30, 1875; thence along said boundary southeasterly to the Green River; thence down the west bank of Green River to the point where the southern boundary of said Uintah Reservation, as surveyed by Du Bois, intersects said river; thence northwesterly with the southern boundary of said reservation to the point where the line between ranges 16 and 17 east of Salt Lake meridian will, when surveyed, intersect said southern boundary; thence south between said ranges 16 and 17 east, Salt Lake meridian, to the third standard parallel south; thence east along said third standard parallel to the eastern boundary of Utah Territory; thence north along said boundary to a point due east of the place of beginning; thence due west to the place of beginning. CHESTER A. ARTHUR.

APPENDIX D

Act of June 7, 1897

30 Stat. 62 at 87

The Secretary of the Interior is hereby directed to allot agricultural lands in severalty to the Uncompahgre Ute Indians now located upon or belonging to the Uncompahgre Indian Reservation in the State of Utah, said allotments to be upon the Uncompahgre and Uintah reservations or elsewhere in said State. And all the lands of said Uncompahgre Reservation not theretofore allotted in severalty to said Uncompahgre Utes shall, on and after the first day of April, eighteen hundred and ninety-eight, be open for location and entry under all the land laws of the United States; excepting, however, therefrom all lands containing gilsonite, asphalt, elaterite, or other like substances.

And the title to all of the said lands containing gilsonite, asphaltum, elaterite, or other like substances is reserved to the United States.

APPENDIX E

25 U.S.C. § 2

The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations.

APPENDIX F

25 U.S.C. § 175

In all States and Territories where there are reservations or allotted Indians the United States attorney shall represent them in all suits at law and in equity.

APPENDIX G

Act of August 15, 1894

28 Stat. 286 at 337

Sec. 20. That the President of the United States is hereby authorized and directed to appoint a commission of three persons to allot in severalty to the Uncompaghre Indians within their reservation, in the Territory of Utah, agricultural and grazing lands according to the treaty of eighteen hundred and eighty, as follows:

"Allotments in severalty of said lands shall be made as follows: To each head of a family one-quarter of a section, with an additional quantity of grazing land not exceeding one-quarter of a section; to each single person over eighteen years of age, one-eighth of a section, with an additional quantity of grazing land not exceeding one-eighth of a section; to each orphan child under eighteen years of age, one-eighth of a section, with an additional quantity of grazing land not exceeding one-eighth of a section; to each other person under eighteen years of age, born prior to such allotment, one-eighth of a section, with a like quantity of grazing land: *Provided*, That, with the consent of said commission, any adult Indian may select a less quantity of land, if more desirable on account of location:" *And provided*, That the said Indians shall pay one dollar and twenty-five cents per acre for said lands from the fund now in the United States Treasury realized from the sale of their lands in Colorado as provided by their contract with the Gov-

ernment. All necessary surveys, if any, to enable said commission to complete the allotments shall be made under the direction of the General Land Office. Said commissioners shall, as soon as practicable after their appointment, report to the Secretary of the Interior what portions of said reservation are unsuited or will not be required for allotments, and thereupon such portions so reported shall, by proclamation, be restored to the public domain and made subject to entry as herematter provided.

Sec. 21. That the remainder of the lands on said reservation, shall, upon the approval of the allotments by the Secretary of the Interior, be immediately open to entry under the homestead and mineral laws of the United States: *Provided*, That no person shall be entitled to locate more than two claims, neither to exceed ten acres, on any lands containing asphaltum, gilsonite, or like substances. *Provided*, That after three years actual and continuous residence upon agricultural lands from date of settlement the settler may, upon full payment of one dollar and fifty cents per acre, receive patent for the tract entered. If not commuted at the end of three years the settler shall pay at the time of making final proof the sum of one dollar and fifty cents per acre.

EXHIBIT H

CONSTITUTION AND BY-LAWS OF THE UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION

PREAMBLE

We, the Ute Indians of the Uintah, Uncompahgre and Whiteriver Bands hereafter to be known as the Ute Indian Tribe of the Uintah and Ouray Reservation, in order to establish a more responsible tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of home rule, not inconsistent with the Federal, State and local laws, do ordain and establish this Constitution for the Ute Indian Tribe of the Uintah and Ouray Reservation.

ARTICLE I—TERRITORY

The Jurisdiction of the Ute Indian Tribe of the Uintah and Ouray Reservation shall extend to the territory within the original confines of the Uintah and Ouray Reservation as set forth by Executive Orders of October 3, 1861 and January 5, 1882, and by the Acts of Congress approved May 27, 1902, and June 19, 1902, and to such other lands without such boundaries as may hereafter be added thereto under any law of the United States, except as otherwise provided by law.

. . . .

(Approved by the Secretary of the Interior on January 19, 1937)

EXHIBIT I

43 U.S.C. § 852(d)(1)

The term "unappropriated public lands" as used in this section shall include, without otherwise affecting the meaning thereof, lands withdrawn for coal, phosphate, nitrate, potash, oil, gas, asphaltic minerals, oil shale, sodium, and sulphur, but otherwise subject to appropriation, location, selection, entry, or purchase under the nonmineral laws of the United States; lands withdrawn by Executive Order Numbered 5327, of April 15, 1930, if otherwise available for selection; and the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.